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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,954	05/02/2001	Dwayne Bowman	249768005US3	6164

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EXAMINER

ALAM, SHAHID AL

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/847,954

Applicant(s)

BOWMAN ET AL.

Examiner

Shahid Al Alam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 7 March 2005 have been fully considered but they are not persuasive for the following reasons.

Applicant argues that Schultz does not teach "using a user's selections in prior query results to refine the results displayed to subsequent users and does not teach accounting for the level of effort required for a user to select a particular result in order to rate that more favorably for subsequent users."

Examiner respectfully disagrees all of the allegations as argued. Examiner, in his previous office action, gave detail explanation of claimed limitation and pointed out exact locations in the cited prior art.

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification.

#### Interpretation of Claims-Broadest Reasonable Interpretation

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "using a user's selections in prior query results **to refine the results** displayed to

**subsequent users”** and **“accounting** for the level of effort required for a user to select a particular result in order to rate that more favorably **for subsequent users”**) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claim 9, arguments have been fully considered but they are not persuasive. Claim 9 is not similar to claim 6 of Group I. Claim 9 teaches a computer memory containing a data structure while claim 6 is a method in a computing system. If the Applicant wishes to add claim 9 in the Group I, then claim 9 needs to be fixed so that this claim does not read a data structure stored in a memory and should not have any 35 U.S.C. 101 problem. However, claim 9 is still directed to a data structure stored in a memory and hence, claim 9 remain rejected under 35 U.S.C. 101.

With respect to Applicant's above arguments, Examiner maintains that Schultz's teachings of searching a database of an information retrieval system (abstract, column 7, lines 5 – 9; column 9, lines 8 – 18 and column 5, lines 6 –12) clearly indicates applicant's claimed invention. Thus, the rejection is maintained.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 9 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 9 recites a memory containing a data structure.

A computer-readable medium that stores a data structure may define structural and functional interrelationships between the data structure. If the medium permits the data structure's functionality to be realized then the medium is statutory.

However, the invention as recited in the claim 9 is directed to a data structure stored in a memory. It is believed that the data structure is accessed by a data processor (or a system) to fulfill a particular objective which ranking search results. A data structure without a processor cannot rank search results.

See Guidelines Sections IV.B.1.(a).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 – 8 and 18 – 20 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent Number 5,640,553 issued to John Schultz ("Schultz").

With respect to claim 1, Schultz teaches a method in a computing system for ranking items in a search result, the method comprising:

receiving a query specifying one or more terms (column 13, lines 59 – 60);

generating a query result identifying a plurality of items satisfying the query; and

for a plurality of items identified in the query result, combining ratings reflecting both (a)

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the frequencies with which users selected the item in query results produced for earlier queries specifying one or more terms of the query and (b) levels of effort required to make such selections, such that the combination of ratings produces a ranking value for the item (column 6, lines 42 – 53; column 13, line 35 – column 14, line 27 and column 36, line 34 – column 37, lines 16 and 65).

As to claim 2, the ratings that are combined reflect the number of items that preceded the selected items in the query results from which they were selected (column 6, lines 42 – 53).

As to claim 3, the ratings that are combined reflect the set of navigation commands needed to reach the selected items in the query results from which they were selected (column 6, lines 42 – 53).

As to claim 4, the ratings that are combined reflect the extent to which the query results from which the items were selected was scrolled to reach the selected items (column 6, lines 42 – 53).

As to claim 5, the ratings that are combined reflect, in the query results from which the items were selected, the number of pages of each query result that preceded the page of each query result containing the selected item (column 6, lines 42 – 53).

Subject matter of claims 6 – 8 are rejected in the analysis above in claims 1 – 5 and these claims are rejected on that basis.

Subject matter of claims 18, 19 and 20 are rejected in the analysis above in claims 1 – 5 and these claims are rejected on that basis.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Contact Information**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shahid Al Alam  
Primary Examiner  
Art Unit 2162

30 May 2005